

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Peter Steffen Ebert	)	Group Art Unit: 3691
	)	
Application No.: 10/019,544	)	Examiner: Daniel KESACK
	)	
Filed: May 9, 2002	)	
	)	
For: APPARATUS AND METHODS OF	)	Confirmation No.: 7477
VISUALIZING NUMERICAL	)	
BENCHMARKS	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**AMENDMENT AND RESPONSE TO FINAL OFFICE ACTION**

In reply to the Final Office Action mailed January 9, 2008, and pursuant to 37 C.F.R.

§ 1.116, Applicant proposes that this application be amended as follows:

**Amendments to the Claims** are reflected in the listing of claims in this paper.

**Remarks/Arguments** follow the amendment sections of this paper.

**AMENDMENTS TO THE CLAIMS:**

This listing of claims will replace all prior versions and listings of claims in the application:

1. (Currently amended) A method for visualizing numerical benchmarks to interpret performance of a business, comprising:

sending a first electronic request to a data provider directly from a user, the request specifying a business;

sending a second electronic request to the data provider directly from a user, the request specifying an industry;

~~automatically accessing~~receiving information electronically from ~~a~~the data provider relating to ~~the~~the general performance of ~~a~~the specified business in relation to ~~a~~the specified industry wherein the information includes a business ratio value, an industry lower quartile value, an industry median value and an industry upper quartile value; ~~and~~

loading the received information into a spreadsheet application; and

creating a display based on the information loaded into the spreadsheet application, including in the display the lower quartile value, the median value, and the upper quartile value of the industry wherein the business ratio value is indicated in relation to the industry lower quartile value, industry median value, and industry upper quartile value and further including in the display at least one reference demarcation regarding a performance of the specified business in relation to the specified industry.

2. (Original) The method of claim 1, further comprising:

determining whether the business ratio value is between the lower quartile value and the upper quartile value; and

including in the display the lower quartile value, the median value and the upper quartile value, wherein the business ratio value is located between the lower quartile value and the

upper quartile value, based on the determination that the business ratio value is between the lower quartile value and the upper quartile value.

3. (Original) The method of claim 1, further comprising:  
determining whether the business ratio value is outside a range between the lower quartile value and the upper quartile value; and  
including in the display the lower quartile value, the median value, and the upper quartile value, wherein the business ratio value is located outside the range between the lower quartile value and the upper quartile value based on the determination that the business ratio value is at least one of less than the lower quartile value or greater than the upper quartile value.

4. (Original) The method of claim 1, wherein the business ratio value represents at least one of a quick ratio, a current ratio, a current liabilities to net worth ratio, a current liabilities to inventory ratio, a total liabilities to net worth ratio, a fixed assets to net worth ratio, a collection period ratio, a sales to inventory ratio, an assets to sales ratio, a sales to net working capital ratio, an accounts payable to sales ratio, a return on sales ratio, a return on assets ratio, and a return on equity ratio.

5. (Original) The method of claim 1, wherein the reference demarcation of the business ratio value includes using a first color to indicate performance of the business between the lower quartile value and the median value and using a second color to indicate performance of the business between the median value and the upper quartile value.

6. (Original) The method of claim 1, wherein reference demarcation of the business ratio value includes using a first shading to indicate performance of the business between the lower quartile value and the median value and using a second shading to indicate performance of the business between the median value and the upper quartile value.

7. (Original) The method of claim 1, wherein reference demarcation of the business ratio value includes using a minus sign to indicate performance of the business between the

lower quartile value and the median value and using a plus sign to indicate performance of the business between the median value and the upper quartile value.

8-13. (Cancelled)

14. (Currently amended) An apparatus for visualizing numerical benchmarks to interpret performance of a business, comprising:

a memory having program instructions;

a display screen; and

a processor responsive to the program instructions to

send a first electronic request to a data provider directly from a user, the request specifying a business;

send a second electronic request to the data provider directly from a user, the request specifying an industry;

automatically access receive information electronically from a the data provider relating to the general performance of a the specified business in relation to a the specified industry wherein the information includes a business ratio value, an industry lower quartile value, an industry median value and an industry upper quartile value; ~~and~~

loading the received information into a spreadsheet application; and

create a display based on the information loaded into the spreadsheet application, including in the display the lower quartile value, the median value, and the upper quartile value of the industry wherein the business ratio value is indicated in relation to the industry lower quartile value, industry median value, and industry upper quartile value and further including in the display at least one reference demarcation regarding a performance of the specified business in relation to the specified industry.

15. (Original) The apparatus of claim 14, wherein the processor is further configured to:

determine whether the business ratio value is between the lower quartile value and the upper quartile value; and

include in the display the lower quartile value, the median value and the upper quartile value, wherein the business ratio value is located between the lower quartile value and the upper quartile value, based on the determination that the business ratio value is between the lower quartile value and the upper quartile value.

16. (Original) The apparatus of claim 14, wherein the processor is further configured to:

determine whether the business ratio value is outside a range between the lower quartile value and the upper quartile value; and

include in the display the lower quartile value, the median value, and the upper quartile value, wherein the business ratio value is located outside the range between the lower quartile value and the upper quartile value based on the determination that the business ratio value is at least one of less than the lower quartile value or greater than the upper quartile value.

17. (Original) The apparatus of claim 14, wherein the business ratio value represents at least one of a quick ratio, a current ratio, a current liabilities to net worth ratio, a current liabilities to inventory ratio, a total liabilities to net worth ratio, a fixed assets to net worth ratio, a collection period ratio, a sales to inventory ratio, an assets to sales ratio, a sales to net working capital ratio, an accounts payable to sales ratio, a return on sales ratio, a return on assets ratio, and a return on equity ratio.

18. (Original) The apparatus of claim 14, wherein the processor is further configured to use a first color to indicate performance of the business between the lower quartile value and the median value and use a second color to indicate performance of the business between the median value and the upper quartile value.

19. (Original) The apparatus of claim 14, wherein the processor is further configured to use a first shading to indicate performance of the business between the lower quartile value and the median value and use a second shading to indicate performance of the business between the median value and the upper quartile value.

20. (Original) The apparatus of claim 14, wherein the processor is further configured to use a minus sign to indicate performance of the business between the lower quartile value and the median value and use a plus sign to indicate performance of the business between the median value and the upper quartile value.

21. (Currently amended) An apparatus for visualizing numerical benchmarks, comprising:

a memory having program instructions;

a display screen; and

a processor responsive to the program instructions to

send a first electronic request to a data provider directly from a user, the request specifying a business;

send a second electronic request to the data provider directly from a user, the request specifying an industry;

automatically access~~receive~~ information electronically from a~~the~~ data provider relating to the general performance of a~~the specified~~ business in relation to a~~the~~ specified industry wherein the information includes a business ratio value, an industry lower quartile value, an industry median value and an industry upper quartile value;~~and~~

loading the received information into a spreadsheet application; and

create a display based on the information loaded into the spreadsheet application, including in the display the lower quartile value, the median value, and the upper quartile value of the industry wherein the business ratio value is indicated in

relation to the industry lower quartile value, industry median value, and industry upper quartile value and further including in the display at least one reference demarcation regarding a performance of the specified business in relation to the specified industry.

22. (Original) The apparatus of claim 21, wherein the processor is further configured to:

determine whether the comparative value is between the lower value and the upper value; and

include in the display the lower value, the median value and the upper value, wherein the comparative value is positioned between the lower value and the upper value, based on the determination that the comparative value is between the lower value and the upper value.

23. (Original) The apparatus of claim 21, wherein the processor is further configured to:

determine whether the comparative value is outside a range between the lower value and the upper value; and

include in the display the lower value, the median value and the upper value, wherein the comparative value is located outside the range between the lower value and the upper value based on the determination that the comparative value is at least one of less than the lower value and greater than the upper value.

24. (Original) The apparatus of claim 21, wherein the processor is further configured to use a first color to indicate performance between the lower value and the median value and use a second color to indicate performance of the business between the median value and the upper value.

25. (Original) The apparatus of claim 21, wherein the processor is further configured to use a first shading to indicate performance of the comparative value between the lower value

and the median value and use a second shading to indicate performance of the comparative value between the median value and the upper value.

26. (Original) The apparatus of claim 21, wherein the processor is further configured to use a minus sign to indicate performance of the comparative value between the lower value and the median value and use a plus sign to indicate performance of the comparative value between the median value and the upper value.

27. (Currently amended) A computer-readable medium containing instructions for visualizing numerical benchmarks to interpret performance of a business, comprising:

sending a first electronic request to a data provider directly from a user, the request specifying a business;

sending a second electronic request to the data provider directly from a user, the request specifying an industry;

~~automatically accessing~~receiving information electronically from ~~a~~the data provider relating to ~~the~~ general performance of ~~a~~the specified business in relation to ~~a~~the specified industry wherein the information includes a business ratio value, an industry lower quartile value, an industry median value and an industry upper quartile value; ~~and~~

loading the received information into a spreadsheet application; and

creating a display based on the information loaded into the spreadsheet application, including in the display the lower quartile value, the median value, and the upper quartile value of the industry wherein the business ratio value is indicated in relation to the industry lower quartile value, industry median value, and industry upper quartile value and further including in the display at least one reference demarcation regarding a performance of the specified business in relation to the specified industry.

28. (Original) The computer-readable medium of claim 27, further comprising:



determining whether the business ratio value is between the lower quartile value and the upper quartile value; and

including in the display the lower quartile value, the median value and the upper quartile value, wherein the business ratio value is located between the lower quartile value and the upper quartile value, based on the determination that the business ratio value is between the lower quartile value and the upper quartile value.

29. (Original) The computer-readable medium of claim 27, further comprising:  
determining whether the business ratio value is outside a range between the lower quartile value and the upper quartile value; and

including in the display the lower quartile value, the median value, and the upper quartile value, wherein the business ratio value is located outside the range between the lower quartile value and the upper quartile value based on the determination that the business ratio value is at least one of less than the lower quartile value or greater than the upper quartile value.

30. (Original) The computer-readable medium of claim 27, wherein the business ratio value represents at least one of a quick ratio, a current ratio, a current liabilities to net worth ratio, a current liabilities to inventory ratio, a total liabilities to net worth ratio, a fixed assets to net worth ratio, a collection period ratio, a sales to inventory ratio, an assets to sales ratio, a sales to net working capital ratio, an accounts payable to sales ratio, a return on sales ratio, a return on assets ratio, and a return on equity ratio.

31. (Original) The computer-readable medium of claim 27, wherein the reference demarcation of the business ratio value includes using a first color to indicate performance of the business between the lower quartile value and the median value and using a second color to indicate performance of the business between the median value and the upper quartile value.

32. (Original) The computer-readable medium of claim 27, wherein reference demarcation of the business ratio value includes using a first shading to indicate performance of

the business between the lower quartile value and the median value and using a second shading to indicate performance of the business between the median value and the upper quartile value.

33. (Original) The computer-readable medium of claim 27, wherein reference demarcation of the business ratio value includes using a minus sign to indicate performance of the business between the lower quartile value and the median value and using a plus sign to indicate performance of the business between the median value and the upper quartile value.

34-39. (Cancelled)

40. (Currently amended) A system for visualizing numerical benchmarks to interpret performance of a business, comprising:

means for sending a first electronic request to a data provider directly from a user, the request specifying a business;

means for sending a second electronic request to the data provider directly from a user, the request specifying an industry;

means for ~~automatically accessing~~receiving information electronically from ~~a~~the data provider relating to the general performance of ~~a~~the specified business in relation to ~~a~~the specified industry wherein the information includes a business ratio value, an industry lower quartile value, an industry median value and an industry upper quartile value;~~and~~

means for loading the received information into a spreadsheet application; and

means for creating a display based on the information loaded into the spreadsheet application, including in the display the lower quartile value, the median value, and the upper quartile value of the industry wherein the business ratio value is indicated in relation to the industry lower quartile value, industry median value, and industry upper quartile value and further including in the display at least one reference demarcation regarding a performance of the specified business in relation to the specified industry.

41. (Currently amended) The ~~method~~system of claim 40, further comprising:  
means for determining whether the business ratio value is between the lower quartile value and the upper quartile value; and

means for including in the display the lower quartile value, the median value and the upper quartile value, wherein the business ratio value is located between the lower quartile value and the upper quartile value, based on the determination that the business ratio value is between the lower quartile value and the upper quartile value.

42. (Original) The system of claim 40, further comprising:  
means for determining whether the business ratio value is outside a range between the lower quartile value and the upper quartile value; and

means for including in the display the lower quartile value, the median value, and the upper quartile value, wherein the business ratio value is located outside the range between the lower quartile value and the upper quartile value based on the determination that the business ratio value is at least one of less than the lower quartile value or greater than the upper quartile value.

43. (Original) The system of claim 40, wherein the business ratio value represents at least one of a quick ratio, a current ratio, a current liabilities to net worth ratio, a current liabilities to inventory ratio, a total liabilities to net worth ratio, a fixed assets to net worth ratio, a collection period ratio, a sales to inventory ratio, an assets to sales ratio, a sales to net working capital ratio, an accounts payable to sales ratio, a return on sales ratio, a return on assets ratio, and a return on equity ratio.

44. (Original) The system of claim 40, wherein the reference demarcation of the business ratio value includes using a first color to indicate performance of the business between

the lower quartile value and the median value and using a second color to indicate performance of the business between the median value and the upper quartile value.

45. (Original) The system of claim 40, wherein reference demarcation of the business ratio value includes using a first shading to indicate performance of the business between the lower quartile value and the median value and using a second shading to indicate performance of the business between the median value and the upper quartile value.

46. (Original) The system of claim 40, wherein reference demarcation of the business ratio value includes using a minus sign to indicate performance of the business between the lower quartile value and the median value and using a plus sign to indicate performance of the business between the median value and the upper quartile value.

47-52. (Cancelled)

### **REMARKS**

In a Final Office Action mailed January 9, 2008 ("Office Action"), the Examiner rejected claims 1-52 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,999,193 to Conley, Jr. et al ("*Conley*") in view of Applicant's admitted prior art in further view of U.S. Patent No. 6,078,924 to Ainsbury et al ("*Ainsbury*").

In response to the Office Action, Applicant cancels claims 8-13, 34-39, and 47-52, rendering the rejection of these claims moot. By this Amendment, Applicant amends claims 1, 14, 21, 27, 40 and 41. Applicant respectfully traverses the remaining rejections and requests reconsideration based on the following remarks. In addition, Applicant does not necessarily agree with or acquiesce in the Examiner's characterization of the claims or the prior art, even if those characterizations are not addressed herein.

### **Claim Amendments**

Applicant has amended claim 1 to recite, *inter alia*, "[a] method for visualizing numerical benchmarks to interpret performance of a business, comprising: sending a first electronic request to a data provider directly from a user, the request specifying a business; sending a second electronic request to the data provider directly from a user, the request specifying an industry; receiving information electronically from the data provider ... loading the received information into a spreadsheet application; and creating a display based on the information loaded into the spreadsheet application..." This amendment is fully supported by the specification, for example, in Paragraphs [0026], [0032], [0033] and [0055]. Claims 14, 21, 27 and 40 are similarly amended. No new matter has been added with these amendments.

### **Rejections Under 35 U.S.C. § 103**

Applicant respectfully traverses the rejection of claims 1-7, 14-33, and 40-46 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims.

The key to support any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See M.P.E.P. § 2142, 8<sup>th</sup> Ed., Rev. 6 (Sept. 2007). “A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention.” M.P.E.P. § 2145. Furthermore, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

When making a determination of obviousness, the Examiner must (1) determine the scope and content of the prior art, (2) ascertain the differences between the claimed invention and the prior art, and (3) resolve the level of ordinary skill in the pertinent art. M.P.E.P. § 2141 (II), 8<sup>th</sup> Ed., Rev. 6 (Sept. 2007) (citing *Graham v. John Deere Co.*, 383 U.S. 1 (1966)). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III). In this application, a *prima facie* case of obviousness has not been established because the Examiner neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claimed invention and the prior art. Accordingly, the Examiner has failed to clearly articulate a reason why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art.

Claims 1-7, 14-33, and 40-46 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Conley* in view of Applicant’s admitted prior art in further view of *Ainsbury*. In the Office

Action, the Examiner correctly notes that *Conley* and Applicant's admitted prior art fail to teach "automatically access[ing] [information] electronically from a data provider," but alleges that this is feature disclosed by *Ainsbury*. Office Action, page 4. Applicant respectfully submits, however, that *Ainsbury* fails to teach or suggest, *inter alia*, "sending a first electronic request to a data provider directly from a user, the request specifying a business," "sending a second electronic request to the data provider directly from a user, the request specifying an industry," "receiving information electronically from the data provider relating to the general performance of the specified business in relation to the specified industry wherein the information includes a business ratio value, an industry lower quartile value, an industry median value and an industry upper quartile value," and "loading the received information into a spreadsheet application," as recited by amended claim 1 and similarly recited by amended claims 14, 21, 27 and 40. (Emphasis added).

*Ainsbury* teaches the use of an "[information] platform [that] provides a sophisticated catalog for finding internal and external information... [and] collection agents, which retrieve specific information without user intervention." *Ainsbury*, Col. 2: ll. 60-65. (Emphasis added). A user can "comb a data source catalog, looking for ... information. ... If the information is not available in the catalog ... the information platform can automatically add [a] new information source to the catalog." *Id.* at Col. 3: ll. 5-15. Thus, *Ainsbury* provides that "[the catalog is the] control center for ... information collection." *Id.* at Col. 3, ll. 27-28. Nowhere, however, in the passages of *Ainsbury* cited by the Examiner or elsewhere is a method taught or suggested that includes "sending a first electronic request to a data provider directly from a user, the request specifying a business," "sending a second electronic request to the data provider directly from a user, the request specifying an industry," "receiving information electronically from the data provider relating to the general performance of the specified business in relation to the specified industry wherein the information includes a business ratio value, an industry lower quartile

value, an industry median value and an industry upper quartile value,” and “loading the received information into a spreadsheet application,” as recited by amended claim 1. (Emphasis added). Rather, *Ainsbury* is limited to use of an integrated catalog in an information platform for information gathering. Accordingly, *Ainsbury* fails to teach or suggest the features recited in amended claim 1 and similarly recited in amended claims 14, 21, 27 and 40. Further, *Conley* and Applicant’s admitted prior art also do not teach or suggest the features recited in amended claim 1 and similarly recited in amended claims 8, 14, 27, 34, 40, and 47.

As explained above, the elements recited in amended claims 1, 14, 21, 27 and 40 are neither taught nor suggested by *Conley*, Applicant’s admitted prior art, or *Ainsbury*, whether viewed separately or in combination. Further, the Examiner has not explained how the teaching of the applied references could be modified to achieve the claimed combination. Consequently, the Examiner has neither properly determined the scope and the content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. As no reason has been clearly articulated as to why amended claims 1, 14, 21, 27 and 40 would have been obvious to one of ordinary skill in the art in view of the applied references and a *prima facie* case of obviousness has not been established, Applicant respectfully requests the Examiner to withdraw the rejection of claims 1-7, 14-33, and 40-46 under 35 U.S.C. §103(a).

### **Conclusion**

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-7, 14-33, and 40-46 in condition for allowance. Applicant submits that the proposed amendments of claims 1, 14, 21, 27, 40 and 41 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the



claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully submits that the entering of this Amendment would allow the Applicant to reply to the final rejections and place the application in condition for allowance.

Finally, Applicant submits that the entry of this Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.


In view of the foregoing amendments and remarks, Applicant respectfully submits that this claimed invention as amended, is neither anticipated nor rendered obvious in view of the references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: February 20, 2008

By:   
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